

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4434

IN THE MATTER OF:

Served November 9, 1994

Application of YELLOW BUS SERVICE,)
INC., Trading as YELLOW)
TRANSPORTATION, for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-94-44

By application accepted for filing September 28, 1994, Yellow Bus Service, Inc., trading as Yellow Transportation (Yellow or applicant), a Maryland corporation, seeks a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

Notice of this application was served on September 29, 1994, in Order No. 4395, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication. Applicant complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record. The application is available for inspection at the office of the Commission during its regular business hours.

Applicant is a wholly-owned subsidiary of Yellow Holding Co., Inc., which is the parent of thirty-seven subsidiaries providing transportation services in the Baltimore metropolitan area. Applicant certifies that neither applicant nor any person holding an equity interest in applicant has ever held any equity interest in any carrier that now holds or has ever held or applied for WMATC operating authority.

Applicant proposes commencing operations with thirteen school buses (seating 24 to 42 passengers), three vans (seating 7 to 15 passengers), twelve minicoaches (seating 21-25 passengers), and three coaches (seating 45 to 47 passengers). Applicant proposes to lease vehicles from its affiliate, Yellow Transportation, Inc. Applicant's proposed tariff contains hourly charter rates, with minimum charges and a discount for specified groups.

Applicant filed a balance sheet as of June 30, 1994, showing assets of \$118,810 and equity of \$118,810. Applicant's income statement for the eighteen months ended June 30, 1994, shows revenue of \$2,621,062; operating costs of \$2,400,049; and net income of

\$221,013. Applicant's projected operating statement for the first twelve months of WMATC operations shows revenue of \$1,800,000; operating costs of \$1,571,000; and operating profit of \$229,000.

Applicant certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

(i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and

(ii) that the transportation is consistent with the public interest.

Based on the evidence in this record, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest.

Because applicant is under common control with other carriers, this case also is governed by Title II, Article XII, Section 3,¹ which provides in pertinent part that a "carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to . . . acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means." The Commission may approve such a transaction if it is consistent with the public interest.²

The public interest analysis in an acquisition through ownership of stock focuses on the fitness of the acquiring party, the resulting competitive balance, the benefits to the riding public, and the interest of affected employees.³ That analysis supports approval of this application. First, our current finding of applicant's fitness permits an inference of the acquiring party's fitness.⁴ Second, because applicant is not currently affiliated with any WMATC carrier, applicant's entry should improve the competitive balance in

¹ In re A-1 Transp., Inc., No. AP-94-25, Order No. 4370 (Aug. 19, 1994); In re D.C. Ducks, Inc., No. AP-94-21, Order No. 4361 (Aug. 9, 1994).

² Order No. 4370; Order No. 4361.

³ D.C. CODE ANN. § 1-2414 (1992); Order No. 4370; Order No. 4361.

⁴ Order No. 4370; Order No. 4361.

this market.⁵ Third, the benefit to the riding public derives from the expected increase in competition.⁶ Fourth, applicant's employees presumably have an interest in seeing their employer obtain valuable new operating rights.⁷

We find that the proposed control of applicant by Yellow Holding Co., Inc., is consistent with the public interest. Applicant is admonished to keep its assets, books and operations completely separate from those of its affiliates.⁸ Sharing of office space and parking facilities will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.⁹

Of course, applicant may lease vehicles from its affiliate, but applicant is reminded Commission Regulation No. 62-02 mandates that vehicles operated by a carrier as lessee "shall be operated by, and under the complete control of, the lessee, and no other, for the entire period of the lease," and that during said period "neither the lessor nor the lessee shall enter into any other . . . lease or sublease of the same vehicle(s) without the approval of the Commission." This would preclude others, including applicant's affiliates, from operating the same vehicles as applicant during the term of the lease or leases.

THEREFORE, IT IS ORDERED:

1. That Yellow Bus Service, Inc., trading as Yellow Transportation, 2100 Huntingdon Avenue, Baltimore, MD 21211, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

2. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on

⁵ See Order No. 4361.

⁶ Order No. 4370; Order No. 4361.

⁷ Order No. 4370; Order No. 4361. To the extent we are charged with safeguarding the interests of employees of applicant's Baltimore affiliates -- which are non-WMATC carriers -- any concerns we might have are allayed by the absence of any suggestion in the record that expansion of applicant's operations into the Metropolitan District will adversely impact the operations of those affiliates.

⁸ Order No. 4370.

⁹ Id.

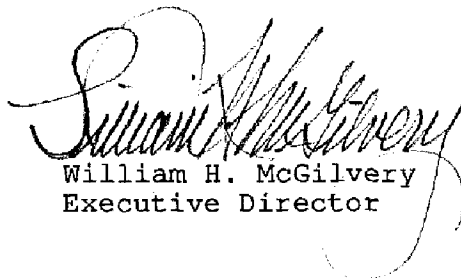
behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 280 is hereby assigned.

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 280 shall be issued to applicant.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. That unless applicant complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND SHANNON:



William H. McGilvery
Executive Director